

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY DESHON FEAGIN,

Defendant-Appellant.

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UNPUBLISHED

June 13, 2006

No. 260551

Saginaw Circuit Court

LC No. 04-024233-FC

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant appeals by right his sentences for his jury convictions of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(f), and assault with intent to commit great bodily harm less than murder, MCL 750.84.<sup>1</sup> Defendant was sentenced to 285 months to 50 years in prison for CSC I and seven to ten years for assault, with credit for 318 days served. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant repeatedly attacked and sexually assaulted his girlfriend over a two-day period because he thought that she was cheating on him. At one point, defendant threw a pottery vase at the victim's head. She ducked and the vase missed her. However, when the vase broke, defendant took a sharp pottery shard and cut her legs with it. The victim's injuries required 15 stitches.

This portion of the assault was taken into account during the sentence scoring. Defendant now challenges the scoring of two sentencing variables used in calculating the applicable sentencing guideline range at 171 to 285 months. In particular, defendant disputes the scoring of Offense Variable (OV) 1 at 25 points and OV 2 at five points.

MCL 777.31(1), which governs OV 1, provides in pertinent part:

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<sup>1</sup> Defendant was acquitted of a second charge of CSC I and a charge of kidnapping, MCL 750.349.

(1) Offense variable 1 is aggravated use of a weapon. Score offense variable 1 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) A firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon..... 25 points

\* \* \*

(d) The victim was touched by any other type of weapon..... 10 points

Similarly, under OV 2, five points should be scored if “[t]he offender possessed a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon” while one point is scored if the offender possessed or used “any other potentially lethal weapon.” MCL 777.32(1)(d) and (e). Defendant maintains that because he used a piece of pottery rather than a knife or other weapon specifically designed for cutting or stabbing, the scoring was inappropriate. He contends that he should have received ten points for OV 1 and one point for OV 2. This scoring would have changed the applicable sentencing grid. Defendant argues that he is entitled to resentencing.

Defendant objected to each alleged scoring error at sentencing, and thus preserved these claims of error for appeal. MCL 769.34(10). A sentencing court has discretion with respect to the scoring of offense variables, provided that evidence of record supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). “Scoring decisions for which there is any evidence in support will be upheld.” *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). However, any necessary statutory interpretation is reviewed de novo on appeal. *People v Lange*, 251 Mich App 247, 253; 650 NW2d 691 (2002).

In *Lange, supra*, this Court concluded that the phrase “any other type of weapon,” as used in MCL 777.31(1)(c), embodied judicial interpretations of dangerous weapons. *Id.* at 256-257. The *Lange* Court applied the common dictionary definition of “weapon,” which includes “any instrument or device used for attack or defense in a fight or in combat” or “anything used against an opponent, adversary or victim,” *id.* at 257, and concluded that a glass mug could be a weapon for the purposes of scoring MCL 777.31(1)(c). *Id.* Defendant now attempts to rely on *Lange, supra*, to claim that, like the mug *Lange* used, the pottery shard he used was “any other type of weapon” because it was not specifically designed as a cutting weapon, such as a knife.

Defendant misinterprets the thrust of *Lange, supra*, and the cases cited therein. *Lange, supra*, discussed the difference between objects that “are designed for the purpose of bodily assault or defense” which “carry their dangerous character because so designed and are, when employed, per se, deadly” and those that “are not dangerous weapons unless turned to such purpose.” *Id.* at 256 (citations omitted). Both types of objects are properly construed as “weapons” under MCL 777.31. *Id.* at 256-257. See also *People v Brown*, 406 Mich 215, 222-223; 277 NW2d 155 (1979) (that a pointed instrument, such as a machete, has great potential as a dangerous weapon does not render it a dangerous weapon per se under MCL 750.227; the prosecutor must prove intent to use the object as a weapon). In the second class of object, it is the intended use of the defendant that renders the object includable in the definition of weapon.

As demonstrated in the instant case, in the same manner that an object not intrinsically dangerous can be used as a weapon, an object not specifically designed to cut can be use to cut someone. A broken vase, like a broken beer bottle, may not be intended specifically as a cutting weapon. However, either can be so employed. Defendant's action in using the pottery shard as a cutting weapon supports the scoring of 25 points for OV 1 and of five points for OV 2. Defendant is not entitled to resentencing.

Affirmed.

/s/ Alton T. Davis  
/s/ David H. Sawyer  
/s/ Bill Schuette